

Court File No. BK-24-3082683-0032
Estate File No. 32-3082683

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED***

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
NIAGARA FALLS CRAFT DISTILLERS LTD. OF THE CITY OF NIAGARA FALLS IN THE
PROVINCE OF ONTARIO**

**FACTUM OF THE COMPANY
(RE: STAY EXTENSION AND ADMINISTRATION CHARGE)**

June 17, 2024

RECONSTRUCT LLP
Richmond-Adelaide Centre
120 Adelaide Street West, Suite 2500
Toronto, ON M5H 1T1

Caitlin Fell LSO No. 60091H
Email: cfell@reconllp.com
Tel: 416.613.8282

Jessica Wuthmann LSO No. 72442W
E-mail: jwuthmann@reconllp.com
Tel: 416.613.8288

Joel Turgeon LSO No. 80984R
Email: jturgeon@reconllp.com
Tel: 416.613.8281

Fax: 416.613.8290

**Lawyers for Niagara Falls Craft Distillers
Ltd.**

TO: THE SERVICE LIST

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PART I – OVERVIEW

1. On May 21, 2024, Niagara Falls Craft Distillers Ltd. (the “**Company**” or “**NFCD**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”). MNP Ltd. was appointed as proposal trustee under the BIA (in such capacity, the “**Proposal Trustee**”).¹
2. This factum is filed in support of the Company’s motion seeking an Order in the form found at Tab 3 of the Company’s Motion Record (the “**Extension Order**”) that, among other things:
 - a) abridges the notice periods and service requirements pursuant to Rule 6 of the *Bankruptcy and Insolvency General Rules*, CRC, c. 368 (the “**Bankruptcy Rules**”);
 - b) extends the time to file a proposal pursuant to s. 50.4(9) of the BIA for 45 days, from April 20, 2024 up to and including August 5, 2024 (the “**Stay Period**”); and
 - c) grants a first-ranking priority charge against the assets, property, and undertakings (the “**Property**”) of the Company (“**Administration Charge**”), in the maximum amount of \$125,000, as security for the payment of the professional fees and disbursements incurred and to be incurred by the Proposal Trustee, counsel to the Proposal Trustee, counsel to the Company, and in the event of a bankruptcy, the trustee in bankruptcy and its counsel.
3. The Company’ requested relief is intended to preserve the going-concern operations of the Company while providing the Company additional time to develop a restructuring plan that will maximize the value of the Company’s assets for the benefit of its stakeholders.
4. The Proposal Trustee is supportive of the requested relief. The Company’s primary secured lender, Bank of Montreal (“**BMO**”), has advised it does not oppose the relief being sought.

¹ Affidavit of Andrew Murison sworn April 12, 2024, [para. 2](#), Motion Record of Niagara Falls Craft Distillers Ltd., Tab 2 (“**Murison Affidavit**”); First Report of the Proposal Trustee dated June 17, 2024 (“**First Report**”), para. 1.

As of the date of this factum, the Company has not been made aware of any opposition to the requested relief.

PART II – FACTS

A. Background of the Company

5. The Company is in the business of producing, manufacturing, and selling high-quality, craft spirits and liquors (the “**Business**”).²

6. The Company operates from leased premises located in Niagara Falls, Ontario. The premises include an area for beverage manufacturing and packaging machines and equipment, an office space, a large warehouse, an outdoor storage area, and other facilities. The Company’s location near the United States border facilitates access to the United States’ economy, which is the predominant importer of Canadian spirits.³

7. Since the Company’s inception, the Company has contributed to the Ontario and Niagara Falls region through the payment of over \$6 million in salaries, remittances of over \$4.5 million in alcohol duties, the generation of \$1 million in sales taxes, and through expenditures of \$3 million to small, local businesses on account of the supply of goods and services.⁴

8. The Company’s Business includes three primary components:

- a) contract manufacturing: the Company is contracted by third parties as a consultant and facilitator in the creation, manufacturing, packaging, and distribution of beverage products. The third parties that are reliant on the Company’s manufacturing services include large corporate groups that own various well-known alcoholic beverage brands as well as small and medium-sized, local businesses.

² Murison Affidavit, *supra*, [para. 7.](#)

³ Murison Affidavit, *ibid*, [para. 13.](#)

⁴ Murison Affidavit, *ibid*, [para. 8.](#)

- b) exclusive distilled spirits partner of Sysco Canada (“Sysco”): The Company is Sysco’s exclusive distilled spirit partner in Ontario. As such, the Company is part of Sysco’s Ontario distribution network and produces and provides promotional/product support of distilled spirits.
- c) manufacturing and selling its own products: true to its roots, the Company continues to develop, manufacture, sell, and distribute its own alcoholic and non-alcoholic beverage products, including Premium Rye Whisky, Premium Maple Whisky, Icebridge Vodka, Ridgeway Canadian Whisky, Lundy’s Lane 1814 London Dry Gin, Arcadia 1923 Filtered Rum, The JRNY Canadian Whisky, Avé Tequila, and Better Daze tequila sodas.⁵

9. To support its Business, the Company maintains relationships with numerous suppliers in Ontario, Canada, and internationally. The Company’s suppliers include carefully selected, local producers who supply the Company with high-quality products. The Company operates on a “just-in-time” basis, with limited inventory. The Company is therefore reliant on a steady flow of critical supplies to sustain its operations.⁶

10. The Company also holds and maintains numerous certifications that have material value, including certifications from the Alcohol & Gaming Commission of Ontario, Canada Revenue Agency (“**CRA**”), Canada Food and Drug Agency, Hazard Analysis and Critical Control Points Canada, Pro-Cert, and the International Organization for Standardization.⁷

11. NFCD’s Business is robust and employs approximately 44 employees of which 40 are full-time employees. None of the employees are unionized.⁸

12. Based on the Company’s books and records, the consolidated book value of the

⁵ Murison Affidavit, *ibid*, [para. 7.](#)

⁶ Murison Affidavit, *ibid*, paras. [11-12.](#)

⁷ Murison Affidavit, *ibid*, paras. [14-16.](#)

⁸ Murison Affidavit, *ibid*, [para. 17.](#)

Company's assets as of May 30, 2024 is \$9.1 million, which primarily comprises accounts receivable (\$800,000), inventory (\$1.62 million), and equipment (\$6.3 million net of depreciation). The Company is in the process of obtaining appraisals for its equipment.⁹

13. In contrast, the Company has approximately \$10.4 million in liabilities. The Company's significant liabilities include:

- a) approximately \$3.14 million owing to Bank of Montreal ("**BMO**") on account of secured financing facilities provided by BMO to the Company pursuant to a Letter of Agreement dated September 11, 2020, as amended by Letter of Agreement Amendment and Restatement dated February 3, 2022 (the "**BMO Facility**");¹⁰
- b) approximately \$3.91 million owing to ALNA Packaging Co., Ltd. ("**Alna**"), on account of secured equipment loans provided by Alna to the Company pursuant to a Loan Agreement dated October 25, 2022 as amended by an Amending Agreement dated February 17, 2023 ("**Alna Loan**");¹¹
- c) approximately \$2.37 million in accounts payable to trade suppliers and service providers;
- d) approximately \$7,000.00 owing to the CRA on account of GST/HST; and
- e) \$117,784.29 in respect of source deduction remittances.¹²

14. According to the search results of the Ontario Personal Property Security Registry, there are three creditors that have registered security against the Company: BMO, Alna, and His Majesty in Right of Ontario as represented by the Minister of Finance.¹³

⁹ Murison Affidavit, *ibid*, [para. 20.](#)

¹⁰ Murison Affidavit, *ibid*, [paras. 22, 24-26.](#)

¹¹ Murison Affidavit, *ibid*, [paras. 22, 27-28.](#)

¹² Murison Affidavit, *ibid*, [paras. 21-23.](#)

¹³ Murison Affidavit, *ibid*, [para. 30.](#)

B. The Company's Financial Difficulties Resulting in the NOI

15. In and around September 2020, the Company began experiencing cash flow pressures due to rising inflation, increasing interest rates, and increased costs across the Company's entire supply chain. For example, from January 2021 to July 2022, interest on the BMO Facility increased by 137%, while the repayment of principal under the BMO Facility increased by 266% from February 2022 to April 2023.¹⁴

16. In response to the Company's cash flow pressures, in and around November 2022, the Company began expending significant funds to decrease costs and increase revenue by expanding its Business. In particular, the Company invested in developing a high-speed canning line and a corresponding expansion of its warehouse footprint. In order to fund the expansion, the Company relied upon the Alna Loan. The Company has not yet realized the anticipated efficiencies from the expansion to offset the increased costs incurred in developing and maintaining the expanded operations. Accordingly, the Company's expansion has added additional pressure on the Company's cash flow.¹⁵

17. The Company's financial challenges have been further exasperated by the LCBO delisting some of the Company's products, the Company's difficulty in collecting accounts receivable from smaller customers, and a temporary decline in the Company's contract manufacturing business.¹⁶

18. Based on the compounding financial pressures facing the Company, the Company was unable to make its debt service payment to BMO. As a result, on May 9, 2024, BMO delivered a demand to the Company and issued a Notice of Intention to Enforce Security under section 244 of the BIA.¹⁷

19. In order to preserve its ongoing operations and value, the Company filed the NOI on May

¹⁴ Murison Affidavit, *ibid*, [paras. 31 and 35](#).

¹⁵ Murison Affidavit, *ibid*, [paras. 32-33](#).

¹⁶ Murison Affidavit, *ibid*, [paras. 34 and 36-38](#).

¹⁷ Murison Affidavit, *ibid*, [para. 39](#).

21, 2024.¹⁸

C. The NOI Proceeding

20. The purpose of the NOI proceeding is to afford the Company the breathing room necessary to evaluate restructuring options and formulate a viable proposal to its creditors that maximizes value for stakeholders.¹⁹

21. Since the filing of the NOI proceeding, the Company has, among other things:

- a) continued to operate the Business in the normal course, with the oversight of the Proposal Trustee;
- b) began developing a SISP with a view to canvassing the market for a transaction and developing a viable proposal;
- c) engaged in discussions with various parties interested in acting as a stalking horse bidder in a SISP;
- d) engaged with stakeholders, including BMO and Alna, to develop consensus in this restructuring proceeding; and
- e) with the assistance of the Proposal Trustee, continued to assess various restructuring options including a SISP, disclaiming of contracts, and selling non-core assets.²⁰

22. Based on the Company's initial discussions with potential bidders, the Company is optimistic that the NOI proceeding presents the best opportunity to maximize the value of the Company's assets and Business.²¹

¹⁸ Murison Affidavit, *ibid*, [para. 41](#).

¹⁹ Murison Affidavit, *ibid*, [para. 42](#).

²⁰ Murison Affidavit, *ibid*, [paras. 44, 46-47, and 49](#).

²¹ Murison Affidavit, *ibid*, [paras. 43-44](#).

PART III – ISSUES

23. The issues before this Court are whether the Court should:
- a) extend the time to file a proposal for 45 days pursuant to section 50.4(9) of the BIA; and
 - b) grant the Administration Charge.

PART IV – LAW & ARGUMENT

A. The Court Should Approve the Stay Extension

24. Pursuant to section 69 of the BIA, a debtor that files an NOI is automatically given the benefit of an initial 30-day stay of proceedings, which may be extended in increments of 45 days on sufficient cause.²²

25. The current stay of proceedings is set to expire at the end of the day on April 20, 2024. Despite diligent efforts, the Company is not yet in a position to deliver a proposal to its creditors. Accordingly, it seeks a 45-day extension of the time to file a proposal to enable it to continue its restructuring efforts and avoid a deemed bankruptcy.

26. The Court has discretion to extend the time for a debtor to file a proposal if the debtor proving on a balance of probabilities that the factors identified in section 50.4(9) of the BIA (the “**Section 50.4(9) Factors**”) are objectively satisfied: (a) the insolvent person has acted, and is acting, in good faith and with due diligence; (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and (c) no creditor would be materially prejudiced if the extension being applied for were granted.²³

²² BIA, [s. 50.4\(9\)](#).

²³ BIA, [s. 50.4\(9\)](#). See for example, *Colossus Minerals Inc. (Re)*, 2014 ONSC 514, (“**Colossus**”), [paras. 37-43](#); *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 at [para. 41](#) (“**Mustang**”); *Chester Basin Seafood Group Inc (re)*, 2023 NSSC 388 (“**Chester Basin**”), [paras. 14](#) and [20-21](#).

i. **The Company has acted in good faith and with due diligence**

27. In *Re H&H Fisheries Limited*, the court noted that “the converse of good faith is bad faith, and bad faith requires some motivation or conduct which is unacceptable”.²⁴ In this case, there is no evidence that the Company has acted with bad faith or conducted itself in an unacceptable manner.

28. In contrast, the Company has submitted evidence, including the comments of the Proposal Trustee in the First Report, which confirms that the Company has acted in good faith and with due diligence since the filing of the NOI.²⁵ Specifically, the Company has taken numerous steps to implement a restructuring that will result in its Business emerging as a going concern including:

- a) with the assistance of the Proposal Trustee and the Company’s legal advisors, beginning to analyze its restructuring options for the benefit of the Company’s stakeholders, including its customers, suppliers and employees;
- b) engaging in discussions with its stakeholders, including NBC, vendors, employees and partners, to build consensus on the next steps in the NOI proceeding; and
- c) engaging in discussions to develop a SISP and negotiate a stalking horse agreement.²⁶

ii. **The Company will be likely to make a viable proposal**

29. The test for whether an insolvent person would likely be able to make a viable proposal if granted an extension is whether the insolvent person might (not certainly will) be able to present a proposal that seems reasonable on its face to a reasonable creditor.²⁷

30. In the context of a first extension, courts have stated that this factor is not a difficult

²⁴ *Re H&H Fisheries Limited*, 2005 NSSC 346 (“**H&H Fisheries**”), [para 17](#).

²⁵ First Report, *supra*, para. 22.

²⁶ Murison Affidavit, *supra*, [para. 49](#).

²⁷ *H&H Fisheries*, *supra*, [para. 22](#); *Nautican v. Dumont*, 2020 PESC 15, [paras 16-17](#); *Andover Mining Corp. (Re)*, 2013 BCSC 1833, [para 35](#).

standard to meet.²⁸ As such, this factor is often met even in circumstances where major creditors believe no viable proposal is possible given this factor is examined on an objective, not a subjective, basis.²⁹

31. The Company submits that the evidence before the Court satisfies this requirement. The Company has advised it will use the extension of the time to maximize realization for its creditors and stakeholders by preserving the going concern of the enterprise while developing a SISF and a possible proposal for the benefit of its general body of creditors.³⁰

iii. No creditor is materially prejudiced

32. In considering this factor, courts consider whether there is a significant concern that would be unreasonable for a creditor to accept.³¹

33. The Company submits that there is no evidence of any material prejudice to any creditor if the requested extension is granted. No additional financing is required for the Company to operate over the Stay Period.³² The extension of the stay will assist in the likelihood of a greater net recovery to creditors by allowing the Company to continue its Business as a going concern and implement the SISF.

34. Conversely, if the extension is not granted, the Company will be deemed to have made an assignment in bankruptcy and its efforts to successfully restructure its Business will be terminated. In such circumstances, the Company would lose the majority of its going concern enterprise value to the detriment of its creditors.³³

²⁸ *Scotian Distribution Services Limited (Re)*, 2020 NSSC 131 (“**Scotian**”), [para. 24](#) cited in at *T & C Steel Ltd., Re*, 2022 SKKB 236, [paras. 8](#) and [20](#).

²⁹ *Nautican v. Dumont*, 2020 PESC 15, [paras. 16-19](#).

³⁰ Murison Affidavit, *ibid*, [paras. 50-51](#).

³¹ *H&H Fisheries*, *supra*, [para. 37](#).

³² Murison Affidavit, *supra*, [para. 52](#).

³³ Murison Affidavit, *ibid*, [para. 51](#).

B. The Court Should Approve the Administration Charge

35. The Company is seeking a first-ranking Administration Charge on all of its Property, in the maximum amount of CAD \$125,000, to secure the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee, counsel to the Company, and, in the event of a bankruptcy, the trustee in bankruptcy and its counsel. The Extension Order contemplates that the Administration Charge will rank in priority to all other security interests, trusts, liens, charges and encumbrances in favour of any person.

36. Section 64.2 of the BIA authorizes this Court to grant a super-priority charge on a debtor's Property to secure professional fees.³⁴

37. Administration charges are routinely granted in insolvency proceedings where: (a) the debtor has limited means to obtain professional assistance; (b) the involvement of professional advisors is critical to the success of the proceedings under the BIA; and (c) the quantum of the proposed charge is commensurate with the complexity of the debtor's business.³⁵

38. The Administration Charge recognizes the value that insolvency professionals bring to such proceedings and allow them to be properly compensated for their efforts.

39. The Company submits that it is appropriate for this Court to grant the Administration Charge given the evidence that, among other things:

- a) the Company has and will continue to rely on the expertise, knowledge, and continued participation of its advisors and professionals during the NOI proceeding;³⁶

³⁴ BIA, at [s. 64.2](#).

³⁵ *Colossus*, *supra*, [paras. 11-15](#); *Mustang*, *supra*, [para. 33](#); *Chester Basin*, *supra*, [paras. 10-13](#).

³⁶ *Murison Affidavit*, *supra* at [para. 55](#).

- b) the quantum of the proposed Administration Charge is reflective of the complexity of the Company's business and is both reasonable and appropriate in the circumstances of the NOI proceeding;³⁷ and
- c) the roles of the beneficiaries of the Administration Charge are not duplicative.³⁸

PART V – RELIEF REQUESTED

40. Based on the foregoing, the Company respectfully requests that this Court grant the proposed form of Extension Order found at Tab 3 of the Company's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th DAY OF JUNE, 2024.



**JESSICA WUTHMANN
RECONSTRUCT LLP**

³⁷ Murison Affidavit, *ibid*, [para. 57](#).

³⁸ Murison Affidavit, *ibid*, [para. 56](#).

SCHEDULE "A"

List of Authorities

1. <u>Colossus Minerals Inc. (Re)</u> , 2014 ONSC 514
2. <u>Re Mustang GP Ltd</u> , 2015 ONSC 6562
3. <u>Chester Basin Seafood Group Inc. (Re)</u> , 2023 NSSC 388
4. <u>Re H&H Fisheries Limited</u> , 2005 NSSC 346
5. <u>Nautican v. Dumont</u> , 2020 PESC 15
6. <u>Andover Mining Corp. (Re)</u> , 2013 BCSC 1833
7. <u>Scotian Distribution Services Limited (Re)</u> , 2020 NSSC 131
8. <u>T & C Steel Ltd., Re</u> , 2022 SKKB 236

SCHEDULE "B"

Statutory Authorities

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Notice of intention

50.4 (1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

- (a) the insolvent person's intention to make a proposal,
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,

and attaching thereto a copy of the consent referred to in paragraph (b).

Certain things to be filed

(2) Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

- (a) a statement (in this section referred to as a "cash-flow statement") indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention and signed by the trustee and the insolvent person;
- (b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and
- (c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

Creditors may obtain statement

(3) Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

Exception

(4) The court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors pursuant to subsection (3) where it is satisfied that

- (a) such release would unduly prejudice the insolvent person; and
- (b) non-release would not unduly prejudice the creditor or creditors in question.

Trustee protected

(5) If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.

Trustee to notify creditors

(6) Within five days after the filing of a notice of intention under subsection (1), the trustee named in the notice shall send to every known creditor, in the prescribed manner, a copy of the notice including all of the information referred to in paragraphs (1)(a) to (c).

Trustee to monitor and report

(7) Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a notice of intention in respect of an insolvent person

(a) shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt;

(b) shall file a report on the state of the insolvent person's business and financial affairs — containing the prescribed information, if any —

(i) with the official receiver without delay after ascertaining a material adverse change in the insolvent person's projected cash-flow or financial circumstances, and

(ii) with the court at or before the hearing by the court of any application under subsection (9) and at any other time that the court may order; and

(c) shall send a report about the material adverse change to the creditors without delay after ascertaining the change.

Where assignment deemed to have been made

(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

(b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

(b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which

meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a)** the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b)** the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c)** no creditor would be materially prejudiced if the extension being applied for were granted.

Court may not extend time

(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

Court may terminate period for making proposal

(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

- (a)** the insolvent person has not acted, or is not acting, in good faith and with due diligence,
- (b)** the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
- (c)** the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or
- (d)** the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

Court may order security or charge to cover certain costs

64.2 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under [section 50.4](#) or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

- (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

Individual

(3) In the case of an individual,

- (a) the court may not make the order unless the individual is carrying on a business; and
- (b) only property acquired for or used in relation to the business may be subject to a security or charge.

Rules of Civil Procedure, RRO 1990, Reg 194

General Principle

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

Effect of Non-Compliance

2.01 (1) A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court,

- (a) may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute; or
- (b) only where and as necessary in the interest of justice, may set aside the proceeding or a step, document or order in the proceeding in whole or in part.

(2) The court shall not set aside an originating process on the ground that the proceeding should have been commenced by an originating process other than the one employed.

Court May Dispense with Compliance

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

Extension or Abridgment

General Powers of Court

3.02 (1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

[Bankruptcy and Insolvency General Rules, CRC c 368](#)

3 In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.

6 (1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.

(2) Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules

(a) must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or

(b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.

(3) A trustee, receiver or administrator who gives or sends a notice or other document shall prepare an affidavit, or obtain proof, that it was given or sent, and shall retain the affidavit or proof in their files.

(4) The court may, on an *ex parte* application, exempt any person from the application of subsection (2) or order any terms and conditions that the court considers appropriate, including a change in the time limits.

IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED AND

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Estate No. 32-3082683

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at *Hamilton*

**FACTUM OF NIAGARA FALLS CRAFT
DISTILLERS LTD.**

RECONSTRUCT LLP

Richmond-Adelaide Centre
120 Adelaide Street West, Suite 2500
Toronto, ON M5H 1T1

Caitlin Fell LSO No. 60091H

E-mail: cfell@reconllp.com

Tel: 416.613.8282

Jessica Wuthmann LSO No. 72442W

E-mail: jwuthmann@reconllp.com

Tel: 416.613.8288

Joel Turgeon LSO No. 80984R

Email: jturgeon@reconllp.com

Tel: 416.613.8281

Lawyers for Niagara Falls Craft Distillers Ltd.